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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/621,516

07/21/2000

Christopher Poli

80,113-0079

4840

(GEN-079)(D23)

7590

10/06/2004

EXAMINER

BELIVEAU, SCOTT E

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ART UNIT

PAPER NUMBER

2614

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No. 09/621,516	Applicant(s) POLI ET AL.	
	Examiner Scott Beliveau	Art Unit 2614	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☒ Newly proposed or amended claim(s) 42 and 43 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 42 and 43.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-31 and 44-51.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

**ADVISORY ACTION**

***Response to Amendment***

1. The amendment filed 8 August 2004 under 37 CFR 1.116 in reply to the final rejection will be entered upon the filing of an appeal, but is not deemed to place the application in condition for allowance. Upon the filing of an appeal and entry of the amendment, the status of the claims would be as follows:

**Allowed claim(s): 42 and 43**

**Rejected claim(s): 1-31 and 44-51**

**Claim(s) objected to: None**

2. The period for reply continues to run 3 MONTHS from the date of the final rejection. Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a) accompanied by the appropriate fee. The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. A reply within the meaning of 37 CFR 1.113 or a request for a continued examination (RCE) in compliance with 37 CFR 1.114 must be timely filed to avoid abandonment of this application.

***Response to Arguments***

3. The request for reconsideration has been entered and considered but is not deemed to place the application in condition for allowance.

With respect to applicant's remarks that the Kauffman et al. reference does not teach or suggest that the claimed download control message specifies either the ROMable size of an

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object to be downloaded (Claim 1) or, more generically, the size of the object to be downloaded (Claims 11 and 21), the examiner respectfully disagrees. In particular, the reference teaches the particular specification of a number of fixed length segments which correspond to the size of the firmware package to be downloaded and implicitly correspond to the size of memory utilized in connection with the operation (Col 7, Lines 32-41; Col 9, Lines 31042; Col 10, Lines 39-51). Given that firmware is clearly stored in a memory structure such as ROM [56] and the specification does not particularly specify any boundary as to what is particularly meant by “ROMable size”, it is the examiner’s opinion that the particular limitation pertaining to a specification of the size of the object is met.

With respect to applicant’s traversal of the OFFICIAL NOTICE stating that it was “notoriously well known in the art to utilize a URL as a means for locating a software object”, the examiner notes several references already of record illustrate that the fact is commonly known. For example, the Maa reference, of record, discloses the generic usage of such circa 1997 wherein broadcasters encode URLs into broadcast streams so as to facilitate the retrieval of software objects including web-pages. Alternatively, the Britt, Jr. reference, of record, further provides evidence of using a URL in connection with locating software so as to upgrade the firmware of a WebTV™ terminal.

With respect to claims 17 and 28, as previously set forth in the previous grounds of rejection, the Kauffman reference discloses the particular usage of a timer such that if particular segments comprising a number of packets (Col 10, Lines 51-54) are not received within a period of time, then the download is terminated. Presuming that a firmware package comprises only two packets, then if a second packet is not received prior to the time out

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condition, then the download is terminated. Alternatively, if a “data packet” is construed as a segment and the firmware package comprises only 2 segments, then “if a timer exceeds a set limit prior to receipt of a next successive data packet” then the download is terminated (Col 7, Lines 25-48).

With respect to claims 19 and 30, the applicant traverses the OFFICIAL NOTICE as to the particular usage of ‘entitlement management messages’ in conjunction with cable systems. As set forth in the grounds of rejection, the OFFICIAL NOTICE was merely directed towards the usage of “entitlement management messages’ in a cable system. Several references already of record, however, illustrate the existence of such being commonly known. For example, the Wasilewski reference discloses that the particular usage of “entitlement management messages” in conjunction with a cable systems usage of “entitlement management messages” is well known in the art circa at least 1994. Furthermore, the particular usage of “entitlement management messages” in conjunction with downloadable firmware is evidenced by the Del Sordo et al. reference.

With respect to claims 44 and 45, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). As previously set forth, the claims do not particularly require or tie back that the download control message explicitly specifies which type of memory that firmware need be stored in. The claim is written in the alternative. Accordingly, the storage in volatile memory may simply be based or in accordance with “data” which specifies some other property or criteria such as timeout information, maximum size, etc. For example, if a package less than the maximum size as

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indicated by the download control information then in accordance with the download control message it should be downloaded to volatile memory.

*Conclusion*


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Beliveau whose telephone number is 703-305-4907.

The examiner can normally be reached on Monday-Friday from 9:00 a.m. - 6:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 703-305-4795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEB  
September 28, 2004

  
JOHN MILLER  
SUPERVISORY PATENT EXAMINER  
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